

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NANCY L. MALONEY,

Plaintiff,

**7:11-cv-782
(GLS)**

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Conboy, McKay Law Firm
Watertown Office
407 Sherman Street
Watertown, NY 13601-9990

PETER L. WALTON, ESQ.

FOR THE DEFENDANT:

HON. RICHARD S. HARTUNIAN
United States Attorney
100 South Clinton Street
Syracuse, NY 13261

JEREMY A. LINDEN
Special Assistant U.S. Attorney

Mary Ann Sloan
Regional Chief Counsel
Social Security Administration
Office of General Counsel, Region II
26 Federal Plaza, Room 3904
New York, NY 10278

**Gary L. Sharpe
Chief Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff Nancy L. Maloney challenges the Commissioner of Social Security's denial of Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) and seeks judicial review under 42 U.S.C. § 405(g). (See Compl. at 1-2, Dkt. No. 1.) After reviewing the administrative record and carefully considering Maloney's arguments, the Commissioner's decision is reversed and remanded for further administrative proceedings.

II. Background

On October 28, 2008, Maloney filed an application for DIB and SSI under the Social Security Act ("the Act"), alleging disability since September 11, 2008 and May 2, 2006, respectively. (See Tr.¹ at 13.) After her application was denied, Maloney requested a hearing before an Administrative Law Judge (ALJ), which was held on August 26, 2010. (See *id.* at 13, 23.) On September 15, 2010, the ALJ issued a decision denying the requested benefits, which became the Commissioner's final determination upon the Social Security Administration Appeals Council's

¹ Page references preceded by "Tr." are to the Administrative Transcript. (See Dkt. No. 7.)

denial of review. (See *id.* at 1-4, 13-22.)

Maloney commenced the present action by filing a complaint on July 11, 2011 wherein she sought review of the Commissioner's determination. (See Compl. at 1-2.) The Commissioner filed an answer and a certified copy of the administrative transcript. (See Dkt. Nos. 6, 7.) Each party, seeking judgment on the pleadings, filed a brief. (See Dkt. Nos. 10, 12.)

III. Contentions

Maloney contends the Commissioner's decision is not supported by substantial evidence. Specifically, Maloney claims the ALJ failed: (1) to properly assess the severity of her conditions; (2) to find she suffers from a listing-level intellectual deficit and/or disorder of her cervical spine; (3) to appropriately determine her Residual Function Capacity ("RFC"); and (4) to properly assess her subjective allegations of pain and disabling symptoms. (See Dkt. No. 10 at 9-24.) The Commissioner counters that substantial evidence supports the ALJ's decision. (See generally Dkt. No. 12.)

IV. Facts

The evidence in this case is undisputed and the court adopts the parties' factual recitations. (See Dkt. No. 10 at 1-8; Dkt. No. 12 at 1-5.)

V. Standard of Review

The standard for reviewing the Commissioner's final decision under 42 U.S.C. § 405(g) is well established and will not be repeated here. For a full discussion of the standard and the five-step process used by the Commissioner in evaluating whether a claimant is disabled under the Act, the court refers the parties to its previous opinion in *Christiana v. Comm'r of Soc. Sec. Admin.*, No. 1:05-CV-932, 2008 WL 759076, at *1-2 (N.D.N.Y. Mar. 19, 2008).

VI. Discussion

Among other arguments, Maloney avers the ALJ erred at step two by failing to consider and/or discuss her pelvic and left lower quadrant pain. (See Dkt. No. 10 at 13.) Implicitly, the Commissioner concedes that this was an error, but nonetheless argues that the objective medical evidence does not support Maloney's subjective complaints of pelvic and left lower quadrant pain. (See Dkt. No. 12 at 10.) Despite the lack of objective medical evidence,² the ALJ's failure to address either the severity of pelvic and left lower quadrant pain standing alone, or in combination with

² Notwithstanding Maloney's claims that her heart condition with chest pain, leg and knee pain, lower back pain, and intellectual deficit are all "severe," (see Dkt. No. 10 at 9), the Commissioner aptly notes that the objective medical evidence overwhelmingly supports the ALJ's contrary findings, (see Dkt. No. 12 at 8-13).

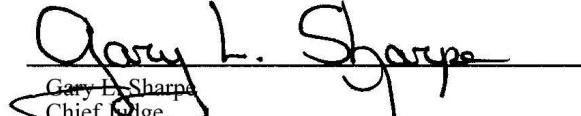
Maloney's other impairments, requires reversal. See *Dixon v. Shalala*, 54 F.3d 1019, 1030-31 (2d Cir. 1995). Moreover, since this error occurred at step two, the court cannot address Maloney's remaining contentions as they discuss purported errors at steps three and four. See *Christiana*, 2008 WL 759076 at *3. Because the court "cannot be certain whether or not the Commissioner's ultimate conclusion that [Maloney] was not disabled is supported by substantial evidence," the Commissioner's decision is reversed and remanded for further administrative proceedings. *Schaal v. Apfel*, 134 F.3d 496, 504 (2d Cir. 1998).

VII. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that the decision of the Commissioner is **REVERSED** and
REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for
proceedings consistent with this Order; and it is further
ORDERED that the Clerk close this case and provide a copy of this
Memorandum-Decision and Order to the parties.

IT IS SO ORDERED.

April 16, 2012
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court